

Six Days to Reinvent Japan

Fifty years ago, in postwar Tokyo, General Douglas MacArthur gave a group of young Americans the assignment of drafting a new constitution for Japan. The resulting democratic charter has ordered Japanese political life ever since. Our author tells the story of this unusual “constitutional convention.”

by Alex Gibney

On February 2, 1946, amid the ruins of postwar Japan, *His Butler's Sister*, starring Deanna Durbin, opened at the Ginza Subaruza in downtown Tokyo. The film, a musical comedy in which a temporary maid falls for her sophisticated boss, was the first American movie approved for showing by the office of the Supreme Commander of the Allied Powers (SCAP), General Douglas MacArthur. The Japanese audiences—who were supposed to be impressed by the film's democratic sentiments—were instead stunned by the sumptuous gowns, well-stocked refrigerators, and other emblems of material wealth that the characters in the film took for granted. Their world was so remote and alien to the viewers in the Ginza Subaruza that the movie seemed almost like science fiction.

But just a few blocks away, something even more fantastic was taking place: General MacArthur, the de facto emperor of Occupied Japan, was preparing orders to revise the fundamental principles of the Japanese state.

Two days later, at his direction, General Courtney Whitney assembled 25 American men and women—military officers, civilian attachés, researchers, and interpreters—in the Dai Ichi Insurance building, across the moat from the Imperial Palace. “Ladies and gentlemen,” Whitney boomed, “we will now resolve ourselves

into a constitutional convention . . . entrusted . . . with the historically significant task of drafting a new constitution for the Japanese people.”

The Americans intended to change the 57-year-old Meiji charter that had allowed a militaristic regime to arise in Japan. They hoped thereby to establish a peace-loving democracy and a legal structure guaranteeing the rights of the Japanese people.

They did their work well. Fifty years later, the constitution they drafted—including the famous “no war” clause of Article Nine and the guarantees of civil rights and democratic freedoms—remains fully in force. Remarkably, during all those years, the Japanese have never seen fit to amend the document.

That may now be changing. During the Cold War, the United States served as Japan's military shield and economic sponsor. With the struggle over, and with Japan prosperous and at peace, some Japanese, as well as a number of Americans, have begun to wonder if the time has not come to alter the constitution's Article Nine, which renounces war and “the threat or use of force as a means of settling international disputes.” Is the United States, which has 45,000 troops stationed in Japan, now stuck with a costly and unnecessary military burden? Does



Standing in the rain outside the imperial palace in Tokyo on May 3, 1947, Emperor Hirohito doffs his hat to a throng of 20,000 gathered to celebrate the adoption of the new Japanese constitution.

the constitutional provision allow Japan to evade its international responsibilities? Is it time, as some contend, for Japan to become a “normal” country again?

There are even more basic questions. Doubts persist among many Japanese and foreign observers as to whether Japan is truly a full-fledged democracy. Because democracy was imposed from above, not demanded from below, by the Japanese people, many maintain that powerful special interests, including big industry, the government bureaucracy, and the Liberal Democratic Party itself, effectively undermined the best efforts of the American framers.

Yet the fact remains that the Japanese people have not cast off their American-drafted constitution. And the reason is clear: most Japanese deeply believe in its principles. This belief was especially strong in 1946, when the rubble and twisted metal throughout Japan’s great cities gave proof of a failed political system. Defeated in war, the Japanese were ready for a General MacArthur, acting like a new emperor, to transform the system that had led to such catastrophe.

MacArthur did not accomplish the task by himself, of course. It helped that the men and women to whom he gave the assignment of revising the constitution were idealistic amateurs, uninhibited by extensive special knowledge of Japan and fervently convinced that the principles of liberal democracy were universal truths.

Buoyed by their nation’s victory in war, the members of SCAP’s Government Section exuded a self-confidence that almost equaled their commander’s. As is well known, MacArthur lacked neither vainglory nor the will to make history. Perhaps because of both, he was willing to sanction occupation policies that seemed to fly in the face of his conservative principles. The policies proclaimed in his name included busting trusts, purging businessmen and politicians tainted by connections with the wartime regime, initiating land reform, bolstering the power of labor unions, and releasing Communists from jail.

The Potsdam Declaration proclaimed by the Allies in 1945 called for the Japanese government to “remove all obsta-

cles to the revival and strengthening of democratic tendencies among the Japanese people” and to establish “freedom of speech, of religion, of thought, as well as respect for fundamental human rights.” Those under MacArthur’s command who saw Potsdam as a license to effect a social revolution in Japan could be certain of his support, so long as giving “power to the people” was part of a military program of dismantling the governmental machinery behind Japan’s war effort.

The members of MacArthur’s Government Section were convinced that the very nature of the Meiji Constitution, written in 1889 by the great 19th-century statesman Ito Hirobumi, had encouraged Japan’s militarism. The charter’s goals were summed up by the slogan “Fukoku Kyohei” (“Rich Nation, Strong Military”). In a hurry to modernize Japan and so protect it from the weapons of the Western powers, Ito traveled all over the world in search of models for a constitution that would adapt modern Western statecraft to the Japanese character, in a way that would centralize power (no time for democracy in the push to modernize) and unify a weak and isolated country of feuding domains (*han*) around a nationalistic symbol.

The charter Ito gave Japan combined the Prussian constitution of Otto Von Bismarck (which is why Japan’s parliament bears the German name Diet) with the mystical allure of the Japanese emperor (a legendary descendant of Japan’s “mother,” the Sun Goddess Amaterasu) who—until he was resurrected by Ito—had been a purely ceremonial figure in Kyoto. By moving the 16-year-old Emperor Mutsuhito to Tokyo from the old imperial capital, dressing him in a military uniform, and making him the sovereign of the Japanese state (with the ceremonial name “Meiji,” meaning “enlightened rule”), Ito and his fellow modernizers from the western domains of Satsuma and Choshu had been able to create a strong national sym-

bol and to design a form of government that looked like a parliamentary democracy.

But, in practice, as political scientist Chalmers Johnson has noted, Ito’s constitution neither permitted real democracy—which many educated citizens had begun to demand—nor bestowed real power upon the emperor. While the constitution gave the emperor the power to declare war and peace, conclude treaties, and appoint key officials, the actual levers of power were operated by the men behind the throne—advisers such as Ito (who also became prime minister) and, later, Japan’s wartime cabinet ministers. Responsible to the emperor, not the Diet, they “were basically beyond the law,” Johnson observed.

After the war, when the American occupiers made it clear that they wanted changes in this political system, Prime Minister Shidehara Kijuro appointed a distinguished group of jurists, the Matsumoto Committee, to consider a few modifications to Ito’s constitution. But when an enterprising Japanese journalist revealed details of the committee’s secret first draft on the front page of Japan’s *Mainichi Shimbun*, readers—most of them extremely bitter toward the existing system—were shocked at how superficial the proposed changes were. The Matsumoto Committee, believing that the militarists had abused a Meiji Constitution that was fundamentally sound, thought that constitutional revision meant little more than dusting off the old furniture. General MacArthur had other ideas.

When General Whitney relayed MacArthur’s order for them to draft a new constitution for Japan, his young subordinates could not believe it. “I was flabbergasted,” recalled Colonel Charles Kades, the popular deputy chief of SCAP’s Government Section who was selected to chair the Constitution Steering Committee (and who died this past June at the age of 90). He was even more astonished when Whitney told them how much time they had to complete their work: a

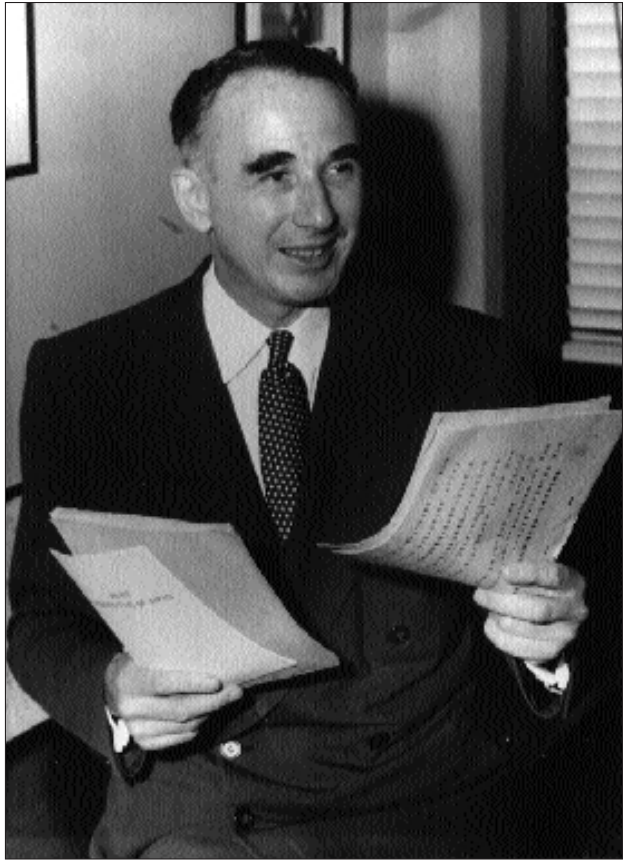
>ALEX GIBNEY, a writer and documentary producer, was the executive producer of the Emmy Award-winning 10-part PBS series “The Pacific Century.” He is completing a book about the American authors of the Japanese constitution. Copy-right © 1996 by Alex Gibney.

mere six days.

The story of their mission mocks the portentous stereotypes of nation building. Kades and the others given this daunting assignment were not learned philosopher-statesmen. They were intelligent, educated men and women who, owing to the urgency of the military's assignment and the might of their nation, found themselves in a peculiar position of power. Their inexperience might even have been an advantage, making them more willing, perhaps, than constitutional scholars or "experts" on Japan to institute the dramatic political changes deemed necessary by the Allies in general, the Americans in particular, and many of the Japanese themselves. Guided by their native idealism, they set out to transform Japan into a Western-style democracy and a beacon of pacifism—in MacArthur's words, "the Switzerland of Asia."

The men and women chosen for this task of "creative destruction" were a diverse lot. They included a doctor, a novelist, a former congressman and governor of Puerto Rico, a newspaperman, a foreign service officer, two academics, and five lawyers. Though they held views that ran the political spectrum, most were liberals who had supported President Franklin Roosevelt's New Deal and were sympathetic to the use of government to promote social equality. They also shared a faith in the American way, and they espoused it with an almost missionary zeal. "We felt that what we knew about American experience could be imposed and replicated almost totally in Japan," says Milton Esman, now an emeritus professor of government at Cornell University, then a 24-year-old with a freshly minted Ph.D. from Princeton.

The brash confidence of the drafters was in part a reflection of their ignorance of



Charles Kades, a lawyer who had been one of FDR's New Dealers before the war, led the Americans who drafted a charter for Japanese democracy.

Japan. "My knowledge was zero," Kades candidly admitted. "Before I arrived, I knew nothing about Japan except that which one would glean from a local American newspaper." Indeed, there was a disdain in the Government Section for anyone—such as the old "Japan hands" in the State Department—who had special knowledge of, or affection for, Japan which might make them reluctant to implement radical social changes.

It was clear to the Americans that the Japanese government did not represent the wishes of the Japanese citizenry. "There were ultra-nationalists in the cabinet at the time," said Kades, "whereas it was clear from the press and the radio and the letters to the editors that the Japanese people wanted to swing to the left. Not to the left of center, but from the extreme right toward the center."

To reinvent Japan, these foreign

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founders had precious little to work with. There were a few translations of published draft constitutions, drawn up by independent Japanese groups and political parties, that the Americans had collected or that had arrived, unbidden, in the Dai Ichi building. There was a dog-eared copy of a vague State Department directive about democracy. And Colonel Kades clutched a handwritten note from MacArthur advising the committee of his wishes. These included retaining the emperor, ending the “feudal” rights of peerage, abolishing war as a sovereign right of the nation, and patterning the budget after “the British system.” “I don’t think any of us had any idea what the British system was,” Kades said, and any resemblance the final draft had to it was, he added, “purely coincidental.”

“I thought, ‘my goodness, we have to have some prototypes,’” recalls Beate Sirota Gordon, who, at 22, was the youngest member of the Government Section and—other than the translators—the only one able to speak Japanese. She commandeered a jeep and driver and set out through the bombed-out ruins of Tokyo in search of constitutions from various countries. Under orders to keep the operation secret, Sirota drove from library to library, taking only a few constitutions from each place, because she “didn’t want to make the librarians suspicious.” She returned with more than a dozen constitutions, and spread them out on a table for her colleagues.

Supervising the “constitutional convention” was a Steering Committee made up of Kades, Lieutenant Colonel Milo Rowell, a conservative Republican lawyer from Fresno, California, and Alfred Hussey, a navy commander and Harvard-trained lawyer from Plymouth, Massachusetts. They divided the members of the “convention” into seven committees.

In drafting a new charter, the Americans tried to preserve some of the character of

the old one. They did not try to force an American-style president and congress on Japan. Rather, they retained the form of a parliamentary system while insisting that both houses of the old bicameral Diet be popularly elected. (In the Meiji Constitution, the upper house had been composed of members of the imperial family, nobles, and imperial appointees.) To forestall abuses of power by the cabinet and unofficial “advisers” to the throne, the new system had the prime minister elected by the lower house, and the entire cabinet responsible to the Diet, not the emperor, as under the Meiji Constitution.

The Committee on the Emperor, Treaties and Enabling Provisions—led by Richard Poole, one of the younger members of the Government Section (and now a retired foreign service officer)—had the important job of defining the emperor’s new constitutional role. “We didn’t want him to be just window dressing,” Poole says. Nor did they want him to retain the power he had under the Meiji Constitution. They finally arrived at the formula that the emperor was “the symbol of the state and the unity of the people, deriving his position from the will of the people with whom resides sovereign power.”

That the emperor should continue to have a role was of the greatest concern to the conservative Japanese government, which regarded the imperial institution as essential to the Japanese polity. But in the United States and among U.S. allies, there was considerable pressure to abolish the institution and to try Emperor Hirohito himself as a war criminal. Fearing that “blood would flow in the streets” if Hirohito were deposed, MacArthur unilaterally decided to keep the emperor. But he was to be stripped of all semblance of power. The constitution that emerged stipulated that the emperor “shall not have powers related to government.” His role was to be purely symbolic.

Yet even as a mere symbol, the emperor remained a problem because he was identified so closely with Japan's militarism and aggression. The solution was to have the Japanese, in the new charter, renounce forever the right to wage war. Kades assigned himself the task of writing Article Nine, the "no war" provision.

The origin of the idea for Article Nine is still a mystery. Though some credit Prime Minister Shidehara, the emperor, or even Kades (who casually mentioned the idea to General Whitney during a car ride to see Shidehara), most informed observers agree that the inventor was probably MacArthur. He, in any case, was the only man with the authority and the audacity to insist on its inclusion. "MacArthur was concerned with his place in history," says Esman, who believes that the general was motivated primarily by his titanic ego. He thought history would take keen and admiring interest in a military man who "was able to induce a society like Japan to renounce armaments."

In Kades's view, Article Nine stemmed partly from a pragmatic concern: MacArthur's fear that Japan might be the battleground for an American-Soviet confrontation if Japan were not "neutral." But Article Nine also resulted from "sheer idealism," said Kades. "MacArthur decided that he might be able to change the course of history, by changing the nature of Japan."

In writing the provision, Kades made a critical change in MacArthur's wording in his handwritten directive, one that looms large even today. MacArthur had written: "Japan renounces [war] . . . even for preserving its own security." Kades struck out that last clause because he "didn't feel it was practical to forbid a nation's self-defense." That stroke of a pen, along with some minor Japanese changes in the text that Kades approved, gave "the color of respectability" (in his words) to the establishment of Japan's Self-Defense Forces—a rather large military body allowed to defend Japan from external attack but prohibited from foreign deployment. (For this reason, Japan provided no troops in the Persian Gulf War.)

Next to Article Nine, the most radical constitutional changes were made by the Committee on Civil Rights. Imagining the reaction of the conservative Japanese Government, the Steering Committee, as an inside joke, staffed this committee with the Government Section's most ardent leftists. Among them was Beate Sirota, a recent graduate of Mills College who had grown up in Japan, spoke fluent Japanese, and was determined to right the social wrongs—particularly, those suffered by women—that she had perceived as a child. She was assigned to the Civil Rights Committee, Kades later said, precisely because "she knew what it was like to live in a police state." Inside the committee, she was given the job of dealing with women's rights, as well as with academic freedom.

In drafting the charter's section on women's rights, Sirota was largely on her own. The Steering Committee provided no initial guidance. The U.S. Constitution had no equal-rights provision. There was nothing about women's rights in any of the State Department directives. And the various constitutions proposed by the Japanese political parties had nothing meaningful on the subject. So this part of Japan's national charter was simply invented on the spot by an idealistic young woman who felt strongly that fundamental injustices inflicted on Japanese women needed to be corrected. "The idea that a woman couldn't decide whom she wanted to marry . . . that she couldn't divorce a man . . . that she really had no rights as far as property was concerned . . . was very disturbing to me," she says.

To prevent any misinterpretation or evasion, Sirota made her first draft pointedly specific. Expectant and nursing mothers were to be guaranteed public assistance, for instance, and not only was there to be universal compulsory education but "school supplies shall be free." The assorted rights were proclaimed in terse one- or two-sentence paragraphs. "I wanted them to be like bullets," she recalls.

Not to be outdone, the other members of the Civil Rights Committee drafted a plan that gave workers the right to orga-

nize, to bargain collectively, and to strike, as well as the right “to earn a living.” They also drafted constitutional guarantees of freedom of speech, due process, and “economic liberty.” Many of the rights set down by the committee became part of the constitution, but others were modified by Kades, the Steering Committee, Whitney, or MacArthur himself.

As for Beate Sirota’s “bullets” for women’s rights, Kades decided that “meritorious though they might be, the provisions were the concern of statutory regulation and not constitutional law.” Sirota confronted the colonel in the hall outside the conference room. She was certain that—given the weight of tradition and male domination of the government—the failure to be specific meant that women would never get equal rights. Why couldn’t Kades—for whom Sirota had the highest regard and affection—understand? She leaned against him and began to cry. Kades was a bit taken aback. No military handbook had prepared him for this spontaneous display of deep emotion by a subordinate. But it changed no one’s mind. While Kades and the Steering Committee left Sirota’s broad guarantees of social security and women’s rights in the constitution, they removed all of her carefully aimed “bullets.”

On February 13, nine days after General Whitney told the men and women of the Government Section about their historic mission, he, Kades, Rowell, and Hussey

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drove to the foreign minister’s residence and presented the American draft of Japan’s new constitution to Shigeru Yoshida, the foreign minister (and a future prime minister), and two other government representatives. The Japanese were stunned. Instead of making a few minor changes, the Americans had turned the

Meiji Constitution on its head—taking power from the emperor and his advisers and giving it not only to the Diet but to women, intellectuals, and labor unions.

After huddling among themselves for half an hour, the Japanese officials apologized to the Americans for keeping them waiting in an adjacent garden. Whitney replied with a brutal but meaningful quip: “Don’t worry, we’ve been enjoying your atomic sunshine.” As if on cue, a B-29 flew by, rattling the windows of the foreign minister’s residence. “It certainly had a persuasive element,” Kades recalled.

Faced with the unmatched force of an occupying power, and the threat that MacArthur would present the new constitution directly to the Japanese people (who were likely to embrace it), Prime Minister Shidehara, Yoshida, and the others agreed to present the American version to the Diet as a Japanese draft. Though few were fooled about the document’s origins (one Japanese journalist said it “smelled of butter,” meaning it was distinctively American), the constitution was approved by both houses of the Diet on November 3, 1946, in the form of an amendment to the 1889 constitution. It went into effect on May 3, 1947.

Besides clarifying the nation’s political system, spelling out with whom political power rested and from whom it came, the new constitution proclaimed a vastly expanded list of popular rights, including not only those enshrined in the U.S.

Constitution but equality of the sexes and the right of labor to bargain and act collectively.

The document’s idealism struck a responsive chord in a devastated populace eager to put the immediate past behind it. To those whose lives had been shattered by war, some of

them living in tin-roofed shacks amid the rubble of Tokyo, the permanent peace offered by Article Nine was strongly appealing. And to Japanese used to living under the wartime regime’s unchecked powers, the guarantees of personal rights and freedoms were also very welcome.

Still, the new constitution *was* being



The effort to democratize Japan did not end with the new constitution. A Tokyo newspaper in 1950 organized a fair near Osaka that featured replicas of American landmarks, including a papier-mâché U.S. Capitol.

imposed by a foreign power. Milton Esman never imagined that the charter would outlast the occupation, which ended in 1952. Today, he credits its lasting popularity to the disparate groups—women, intellectuals, teachers, and labor unions—that fought against any basic changes that might encourage militarism or limit freedom of expression.

The fact of the matter is that many of the democratic ideas contained in the “MacArthur Constitution” were not foreign to many Japanese. Even during the Meiji era, as proved by the discovery of model constitutions in village farmhouses all over Japan, educated citizens were reading the works of Locke, Spencer, and Rousseau, and pressing their government for greater popular representation and individual rights. Their ideas had simply been suppressed by Japan’s rulers—men whose power was buttressed by a constitution and a system of government that strengthened the state at the expense of freedom and democracy. The “MacArthur Constitution” was an attempt to fix that.

Ironically, the Americans themselves were partly responsible for weakening the

very democratic reforms that the constitution encouraged. With the advent of the Cold War and the fall of China to Mao Zedong’s Communists, and the election of a Republican majority in the U.S. Congress, American occupation policy in Japan changed. Instead of shoring up all of the new constitution’s reforms, the architects of U.S. foreign policy focused on building up Japan as a bulwark against communism in Asia. In practice, that meant bolstering conservative forces within the Japanese political economy while undermining more liberal forces, such as labor unions. The occupation command sent clear signals—through aggressive “red purges” and the banning of strikes—that the democratic traditions embedded in the constitution should not be carried to “extremes.”

While the Americans’ ignorance of Japan may have helped them to make sweeping constitutional changes, it was a disadvantage when it came to understanding how the new democratic principles would be implemented. As a result, the Diet remained weaker than intended and, as Kades admitted to me, because the Government Section never understood

the unique power of Japan's bureaucracy in relation to the Diet, the unsympathetic bureaucracy was able to undermine many of the democratic reforms.

Still, the constitution made a great difference. The drafters could not have foreseen the extraordinary impact that Article Nine was to have on Japan—and the world. "It never occurred to us," recalled Kades, "that [because of Article Nine] Japan would not have to spend enormous amounts of money on defense and therefore could channel that money into economic recovery and become an economic superpower."

Today, Japan has grown so used to its military dependency on the United States that it sometimes has difficulty charting its own course in world affairs. A 1994 report by a nongovernmental commission in Japan urged that the nation assume a larger international role, including taking a greater part in United Nations peacekeeping operations. In recent years, stung by criticism of its failure to send troops to take part in the 1991 Persian Gulf War, Japan has bent Article Nine to send unarmed soldiers to assist international peacekeeping efforts in Cambodia, Mozambique, and Rwanda. Increasingly, though, both inside and outside Japan, there are calls for Japan to amend its "Peace Constitution."

Yet Japan, constrained by its own history, has not done so. Inside Japan, there is still great popular resistance to strengthening the military. And among other nations, there is also strong resistance. Many in South Korea, North Korea, China, Taiwan, and Southeast Asia have not forgotten the brutality of Japan's military aggression in World War II. When Japanese prime minister Ryutaro Hashimoto visited the controversial Yasukuni shrine to the spirits of the country's military heroes in Tokyo this past July, there were immediate protests from China, the two Koreas, and other Asian countries.

In the post-Cold War world, Japan is trying gradually to define its proper role. If the Japanese do amend Article Nine so as to be able to fulfill their international responsibilities, they will have to find a way to mollify the fears of Asia's other powers, lest the specter of a revived Japanese militarism prompt a destabilizing arms race in the region.

The other radical constitutional change that Charles Kades and his cohorts made—the guarantees of civil rights and freedoms—has also proven a lasting legacy. Until recently, Japan was the only country in Asia where the people enjoyed freedom of speech, freedom of the press, and the right to a fair trial; where unions had the right to organize, and where women were at least constitutionally assured of equality with men.

That last guarantee—of sexual equality—has not, to be sure, turned Japan into a fully egalitarian society. Although the enfranchisement of women and the constitutional guarantees of women's rights, including the right to own property and the right to divorce, were tremendous advances, Japanese culture, with its tradition of female subservience, has proven resistant to change.

And that points up the central contradiction of Japan's democratic constitution: it was bestowed as a gift from above rather than achieved through strong popular demand. As a document drafted by foreign amateurs in less than a week, it was a remarkable accomplishment, and it has served Japan well in the half-century since. But its weakness was also the weakness of the occupation: it was democracy by directive. Nevertheless, the constitution was not rejected. As the Japanese have more and more made it their own, it has grown stronger. The constitution's origins still matter, but what matters more is how the Japanese continue to interpret and adapt it to fit the needs of their own changing society.